

**\*\*NOT FOR PRINTED PUBLICATION\*\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

MARK L. MADENWALD and	§	
ALMEDA F. MADENWALD	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	Case No. 4:13cv136
	§	(Judge Clark/Judge Mazzant)
JPMORGAN CHASE BANK, N.A. and	§	
U.S. BANK, NATIONAL	§	
ASSOCIATION, AS TRUSTEE FOR	§	
WAMU MORTGAGE PASS THROUGH	§	
CERTIFICATE FOR WMALT SERIES	§	
2007-OA3 TRUST	§	
	§	
<i>Defendants.</i>	§	

**ORDER ADOPTING REPORT AND  
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On July 24, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants' Motion to Dismiss First Amended Complaint [Doc. #13] be denied [Doc. #23]. Defendants filed objections on August 2, 2013 [Doc. #25]. On August 8, 2013, plaintiffs filed a response [Doc. #27].

The court, having made a *de novo* review of the objections raised by defendants [Doc. #25], is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit as to the denial of the Rule 12(b)(6) motion. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this

court as to the denial of the Rule 12(b)(6) motion. A motion under Rule 12(b)(6) tests the formal sufficiency of the plaintiffs' statement of their claim for relief, and cannot be used to resolve factual issues or the merits of the case. Dismissal under Rule 12(b)(6) is appropriate only if plaintiffs have not provided fair notice of their claims. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). Generally, motions to dismiss for failure to state a claim are viewed with disfavor. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000). It is within the power of a court to require a party to produce evidence rather than lengthy, convoluted, and sometimes misleading arguments, before deciding that judgment should be granted. And, in this case, if the facts are as clear as defendants claim, a motion for summary judgment should accomplish the "just, speedy, and inexpensive determination" of this action. *See Fed. R. Civ. P 1.* However, the court does not agree to the finding that discovery is necessary before proceeding to a motion for summary judgment. That decision will depend on the facts presented and the issues raised in such a motion.

It is, therefore, **ORDERED** that Defendants' Motion to Dismiss First Amended Complaint [Doc. #13] is **DENIED**.

So **ORDERED** and **SIGNED** this 22 day of August, 2013.



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Ron Clark, United States District Judge